

HAVILAH GOLD CO., INC.

IBLA 87-630

Decided December 11, 1989

Appeal from a decision of the Nevada State Office, Bureau of Land Management, declaring mining claims abandoned and void. N MC 275768 through N MC 275771.

Reversed in part, set aside in part, and remanded.

1. Federal Land Policy and Management Act of 1976: Recordation of Affidavit of Assessment Work or Notice of Intention to Hold Mining Claim--Mining Claims: Abandonment--Mining Claims: Assessment Work

Under sec. 314(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744(a) (1982), the owner of an unpatented mining claim located after Oct. 21, 1976, is required to file evidence of assessment work or notice of intention to hold the claim on or before Dec. 30 of each year following the calendar year in which the claim was located. Failure to so file constitutes conclusive abandonment of the claim and renders it void.

2. Federal Land Policy and Management Act of 1976: Recordation of Affidavit of Assessment Work or Notice of Intention to Hold Mining Claim--Mining Claims: Abandonment

A decision declaring a mining claim to be abandoned and void pursuant to sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1982), will be reversed if the mining claimant had filed an affidavit of assessment work for a group of claims that sufficiently identifies that claim.

3. Federal Land Policy and Management Act of 1976--Recordation of Affidavit of Assessment Work or Notice of Intention to Hold Claim--Mining Claims: Recordation

Use of the term "all contiguous," when appended to a list of mining claims on an affidavit of assessment

work, is not sufficient to identify additional claims to comply with sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1982).

4. Federal Land Policy and Management Act of 1976: Assessment Work--Federal Land Policy and Management Act of 1976: Recordation of Affidavit of Assessment Work or Notice of Intention to Hold Mining Claim--Mining Claims: Recordation--Mining Claims: Abandonment

BLM has no affirmative obligation to send a notice to remind a mining claimant of the need to make annual filings or to contact a mining claimant to ascertain which claims are intended to be included in the annual filings required by 43 U.S.C. § 1744 (1982).

5. Federal Land Policy and Management Act of 1976: Recordation of Affidavit of Assessment Work or Notice of Intention to Hold Claim--Mining Claims: Abandonment--Mining Claims: Recordation

Where BLM has declared some claims void, but not others, apparently on the basis of identical information provided by the claimant in a group affidavit of annual assessment work, and where it is possible the claims could have been identified from information contained in the affidavit, the decision shall be set aside and remanded for further proceedings consistent with the provisions of sec. 314, Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1982).

APPEARANCES: Raphael J. Arnold, President, Havilah Gold Co., Inc., Fallon, Nevada.

OPINION BY ADMINISTRATIVE JUDGE BYRNES

Havilah Gold Co., Inc. (appellant), has appealed from a decision of the Nevada State Office, Bureau of Land Management (BLM), dated June 24, 1987, which declared the Solomon Nos. 1 through 4 unpatented mining claims abandoned and void because no affidavit of annual assessment work or notice of intention to hold these claims was filed with BLM on or before December 30, 1986. The claims are also known by their BLM serial numbers: N MC 275768 through N MC 275771.

The claims were located in 1983 as part of a group of 12 claims, known as the Solomon Nos. 1 through 12 lode mining claims. Copies of the notices of location were filed with BLM on August 1, 1983, at which time BLM assigned serial numbers N MC 275768 through N MC 275779 to the claims. Although we have only BLM's file on the Solomon Nos. 1 through 12 claims, it appears that there are 41 "Solomon" claims owned by appellant, with additional serial numbers as follows: Solomon Nos. 13 through 18 (N MC 278605 through N MC 278610), and Solomon Nos. 19 through 41 (N MC 304567 through N MC 304589).

On September 17, 1986, BLM received a photocopy of an affidavit of annual assessment work for a group of "Solomon" claims. The description of the claims on this affidavit is central to the dispute here. The affidavit contained three separate descriptive elements.

First, the claims were described in the affidavit as follows: "Solomon #5-#6-#7-#24-#27-#28-#29-#30-#31-#37-#38 (ALL CLAIMS CONTIGUOUS) #18-#25-#32-#36-#39-#40-#2 (ALL CONTIGUOUS)." Thus, only 18 of the "Solomon" claims were specifically referenced by name.

Additionally, the affidavit contained references to four "document numbers" for four "claim maps" in county records. Directly next to each document number was a reference to numbers that correspond to the specific "Solomon" claims covered by the referenced map, as follows:

(#1 - #12)(62810)
(AMENDED)(62949)
(13-18)(62950)
(19-41)(066543)

The record on appeal contains copies of two claim maps numbered "62810" and "62949" by the Mineral County, Nevada, Recorder. Map 62810 depicts the Solomon Nos. 1 through 12 claims, and Map 62949 depicts the Solomon Nos. 1 through 12 amended claims. Although the record does not contain Map 62950 or Map 066543, it would appear that these maps refer, respectively, to the Solomon Nos. 13 through 18 and the Solomon Nos. 19 through 41 claims. Thus, it is apparent that the affidavit referred, at least indirectly, to all 41 "Solomon" claims, including the four at issue in this appeal.

Finally, the affidavit contains a listing of BLM serial numbers, added to the photocopy in red ink as follows:

NMC 275769 - 79
278605 - 10
NMC 304567 - 88

The references to Maps Nos. 62810 and 62949 were also circled in red ink. The above serial numbers correspond, respectively, to the Solomon Nos. 2 through 11 mining claims, and (we presume) 1/ to the Solomon Nos. 13 through 18 and the Solomon Nos. 19 through 40 claims. Thus, the Solomon No. 1 claim (N MC 275768) and the Solomon No. 41 claim (N MC 304567) were inexplicably omitted from the serial numbers.

The record contains a note to the file, dated July 14, 1987 (long after the filing of the affidavit), explaining that these BLM serial numbers in red were placed on the copy of the affidavit by a BLM employee and that claimant did not supply any serial numbers. It thus also appears that a BLM employee circled the references to the maps.

1/ In the absence of documentation concerning Solomon Nos. 13 through 41 claims, it is not possible to be absolutely certain that these serial numbers were assigned to them.

Although evidently placed on the form by a BLM employee, it nevertheless appears that these serial numbers were on the photocopied affidavit at the time it was filed with BLM, because appellant has submitted a second photocopy of the affidavit, bearing BLM's receipt date and showing the serial numbers as photocopied text, rather than red ink. We are left to speculate that a BLM employee entered the BLM serial numbers on the affidavit at the time of filing, and that appellant retained a photocopy of the document as amended. This perception is supported by appellant's assertion in his statement of reasons that the document filed with BLM contained a reference to serial numbers.

The first photocopy of the affidavit of assessment, which was filed with BLM on September 17, 1986, and which is in the record, has been marked up, presumably by BLM after its filing. The reference to serial numbers "NMC 275769 - 79" (in red ink) was changed (in black ink) to "NMC 275772 - 79." Also, certain information has been "highlighted" in blue ink.

Appellant argues that these claims are not abandoned and that the serial numbers and the references to "contiguous" claims sufficiently identify the claims intended. Appellant observes that group assessment work is permitted and asserts that unworked claims in the group need not be specifically identified. In addition, appellant emphasizes that the Solomon No. 2 claim was specifically listed and that "several" additional references to serial numbers also appeared on the document. Appellant submits a photocopy of the 1986 proof of labor which shows the added BLM serial numbers, but no other inked notations. He objects that in previous years, BLM had sent notification to indicate which claims were subject to abandonment and argues that BLM should have contacted him if it was not sure which claims he intended to designate on the affidavit.

[1] Section 314(a) of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744(a) (1982), requires the owner of an unpatented mining claim located after October 21, 1976, to file a notice of intention to hold the claim or evidence of assessment work performed on the claim prior to December 31 of each year following the calendar year in which the claim was located. 43 CFR 3833.2-1(d). This is a statutory requirement. The failure to comply is "deemed conclusively to constitute an abandonment of the mining claim." 43 U.S.C. § 1744(c) (1982); 43 CFR 3833.4(a). These provisions were upheld in United States v. Locke, 471 U.S. 84 (1985).

[2] As appellant observed, however, the affidavit of assessment work specifically listed the Solomon No. 2 claim by name. Listing a claim by name on an affidavit of assessment work is sufficient identification. See Arley R. Taylor, 86 IBLA 283, 284 (1985); Philip Brandl, 54 IBLA 343 (1981). Appellant identified this claim sufficiently to fulfill the statutory filing requirement as to this claim. Therefore, the BLM decision is reversed as to the Solomon No. 2 claim.

[3] Appellant argues that BLM should have attributed this affidavit to all contiguous claims. We disagree. Writing the words "all contiguous" after a list of claim names is not sufficiently specific to delineate exactly which claim or claims are intended to be included in a list on

an affidavit of assessment work. The term "contiguous" could be merely descriptive of listed claims. If BLM was to attempt to construe the term to extend a list to unmentioned claims, BLM would have to guess which claims were intended, and whose. Although a single affidavit of assessment work can suffice for a group of claims, this does not obviate the need to identify the claims involved. See George M. Wilk Wilkinson, 103 IBLA 121, 122 (1988).

[4] Appellant contends that BLM breached affirmative duties to mail a reminder notice and to inquire which claims were intended to be included. Contrary to appellant's assertions, BLM has no affirmative obligation to send a reminder notice. United States v. Locke, *supra* at 108-09; Gordon B. Copple, 105 IBLA 90 (1988). It is the mining claimant's responsibility to make the required filings. Comstock Tunnel & Drainage Co., 87 IBLA 132, 134 (1985). Nor is it the duty of BLM to inquire as to the meaning of the documents submitted to it. See Red Top Mercury Mines, Inc., 96 IBLA 391 (1987), *aff'd*, Civ. N. A87-327 (D. AK. Sept. 16, 1988), *aff'd* No. 88-4270 (9th Cir. Oct. 3, 1989); John F. & Vickie L. Malone, 89 IBLA 341, 343-44 (1985). FLPMA places the responsibility for filing on the mining claimant. As the Supreme Court observed in Locke, at page 108,

[E]very claimant in appellee's position already has filed once before the annual filing obligations come due. That these claimants already have made one filing under the Act indicates that they know, or must be presumed to know, of the existence of the Act and of their need to inquire into its demands.

Thus, any loss resulting from appellant's failure to complete the required filing cannot be attributed to BLM.

[5] The Board has consistently ruled that the affidavit of assessment work must contain the BLM serial number, claim name, or some other description of the claims sufficient to identify it. Ethel Bilotte, 99 IBLA 159, 162 (1987), Philip Brandl, *supra* at 344. In this case, however, it is not clear that the appellant failed to provide a sufficient description to BLM.

As stated above, the face of the affidavit lists only 18 Solomon claims. By itself, this list would not be adequate to describe all the claims. The record before the Board encompasses the Solomon Nos. 1 through 12 claims, N MC 275768 through N MC 275779. However, of these claims, only Nos. 2, 5, 6, and 7 were listed on the face of the affidavit. Thus, if there were nothing else in the affidavit from which to identify the claims, it would appear that BLM should have declared the remaining claims abandoned and void. However, it evidently did not.

The serial numbers which appear in red ink on the affidavit include "N MC 275769-79," which applied to the Solomon Nos. 2 through 12 claims. As discussed above, the record contains a "Note to the File," dated July 14, 1987, which states that the serial numbers were "added by a BLM employee." Since this note was added long after the filing and does not explain when or why the two sets of serial numbers were added, it is of limited probative value. However, this document would seem to show that BLM must have been able to identify the claims in question from some other

information, perhaps that contained in the affidavit. ^{2/} As previously noted, the affidavit contains a notation, "(#1-#12)," to identify claim maps for certain of the Solomon claims and this notation is circled in the same color ink as the claim numbers "N MC 275769-79." This notation might have been sufficient for BLM to have identified some of the unlisted Solomon claims. But if that were the case, why could BLM not identify the Solomon No. 1 claim as N MC 275768? Even more puzzling, however, is that BLM was apparently able to identify the Solomon Nos. 8, 9, 10, 11, and 12 claims from the face of the document, since it evidently did not declare them abandoned. We can find no reason why BLM would declare the Solomon Nos. 1, 3, and 4 claims void while holding the opposite regarding the Solomon Nos. 8, 9, 10, 11, and 12 claims.

Based on the record before it, the Board cannot divine any reasonable explanation for this seeming inconsistency in BLM's decision. Nor can we determine what result is appropriate, in view of the uncertainty as to what transpired. Therefore, we deem it appropriate to set aside the BLM decision as to the Solomon claim Nos. 1, 3, and 4 and remand to BLM for further proceedings, consistent with this opinion, to determine whether the claims are sufficiently identified in the affidavit of assessment work.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision of the Nevada State Office is reversed in part, set aside in part, and remanded.

James L. Byrnes
Administrative Judge

I concur:

David L. Hughes
Administrative Judge

^{2/} It is also possible that BLM was able to determine the serial numbers by using information gleaned from the person who filed the affidavit, and that a BLM employee incorrectly entered them on the affidavit in red at that time, leaving off N MC 275768.